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SEP 13 2010

OFFICE OF PETITIONS

In re Patent of Schemmel et al.: DECISION ON REQUEST
Patent No. 7,682,417 : FOR RECONSIDERATION OF
Issue Date: March 23, 2010 : PATENT TERM ADJUSTMENT
Application No. 10/830,003 : and
Filed: April 23, 2004 : NOTICE OF INTENT TO ISSUE
Atty. Docket No. P24945 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 21, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred forty-six (1646) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred forty-six (1646) days is **granted to the extent indicated herein.**

The sole issue pertains to the three years to issue guarantee of 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) (hereinafter, "B delay"). The Office concurs with patentees' assertion that the B delay period begins on April 24, 2007, which is one day after three years after the filing of the application on April 23, 2004, and ends on March 23, 2010, when the patent issued. However, the proper calculation is 1065 days, not 1064 days as asserted by patentees. The Office concurs with patentees' conclusion that, pursuant to 37 CFR 1.702(b)(4), 583 days are excluded from the B delay period as days consumed by appellate review. The B delay period is 482 (1065 - 583) days.

In light thereof, the correct patent term adjustment is 1647 days, which is the sum of 615 days of delay under 35 U.S.C. 154(b)(1)(A) and 482 days of B Delay and 583 days for successful

appellate review under 35 U.S.C. 154(b)(1)(C) and reduced by 33 days for Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted **by one thousand six hundred forty-seven (1647) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,682,417 B2

DATED : March 23, 2010

DRAFT

INVENTOR(S) : Schemmel et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1521 days

Delete the phrase "by 1521 days" and insert – by 1647 days--